

4/26/77 [2]

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THE WHITE HOUSE
WASHINGTON

4-26-77

To follow

Good outline. I want
my Nore Deme speech to
incorporate essence of this
but be much broader.
SALT. Mid East. Non-poll. food.
food. N/S. AID. Convent
arms sales - etc. Work
with Jb. on it -

J.C.

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THE WHITE HOUSE
WASHINGTON

April 26, 1977

Jim Fallows -

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

cc: Z. Brzezinski

Re: Notre Dame Speech

LAW DAY SPEECH

Dean Beaird, students, faculty and alumni of the University of Georgia Law School, distinguished guests: I am delighted to be here with you on Law Day. And I am honored at the presence of my friend Dean Rusk, a distinguished member of your faculty.

I speak today about a subject that has received great attention in the first few months of our new Administration, yet which is still misunderstood by many in this country and abroad. This is our resolve to put concern for the advancement of human rights at the center of our foreign policies.

Many here today have long been advocates of human rights within our own society. And the struggle for civil rights continues, throughout our nation.

Many Northerners in the early years of the civil rights movement treated the issue as a "Southern" problem. They were wrong. It is a problem for all of us. Now, as a nation, we must not make a similar mistake toward the rest of the world. Protection of human rights is a challenge for all nations, not a problem for a few.

Promotion of human rights around the world will require our most careful thought no less than our most dedicated efforts. Realizing that our policy must be understood to be effective, I want today to set forth the nature of our policy, the results we hope to achieve.

I

The promotion and protection of human rights is one of the fundamental tenets of this Administration's foreign policy. While our human rights policy draws its sustenance from ancient values, it looks hopefully to the future. In the past, it may have seemed sufficient to put our name to international documents that spoke loftily of human rights. We do not consider that enough. Rather, we are taking the initiative, joining with like-minded people and governments around the world in pursuit of an objective that deserves our sustained and creative efforts.

Let us define what we mean by "human rights."

First, there is the right to be free from intrusion on the physical integrity of the person. Such intrusions include, for example, torture; cruel, inhumane or degrading treatment or punishment; arbitrary arrest or imprisonment; denial of fair trial; and invasion of the home.

Second, there is the right to have such basic needs as food, shelter, decent health care and education fulfilled, and to be free from state action or inaction that prevents their fulfillment. A government can violate such rights through, for example, grossly unfair tax systems which prevent the poor from satisfying their basic needs; corrupt official processes which divert resources to an elite at the expense of the needy; and indifference to the plight of the poor.

Third, there is the right to enjoy political liberties -- for example, freedom of thought, conscience and religious freedom of speech; freedom of the press; freedom of movement both within and outside one's own country; freedom to take part in government.

Our policy is the promotion of all these rights. The denial of any rights on the basis of race, religion, language or sex is particularly grave. These rights are all recognized in the Universal Declaration of Human Rights, a basic document which the United States helped fashion and which the members of the United Nations approved in 1948. There may be disagreement on the priorities these rights deserve. But I believe that, over time, all of these rights can be complementary and mutually reinforcing.

II

We recognize that our human rights policy is a revolutionary policy, in the sense that our nation is founded upon a revolutionary philosophy. As Archibald MacLeish wrote during our Bicentennial a year ago, "The cause of human liberty is now the one great revolutionary cause in this inhumane world...."

We believe, as President Carter put it in his speech before the United Nations, that:

"...All signatories of the UN Charter have pledged themselves to observe and to respect basic human rights. Thus, no member of the United Nations can claim that mistreatment of its citizens is solely its own business. Equally, no member can avoid its responsibilities to review and to speak when torture or unwarranted deprivation occurs in any part of the world..."

As confirmed by international practice since 1945, a state's obligation to respect human rights has become a matter of lawful international concern.

Our obligation under the UN Charter to promote respect for human rights is now written into our domestic legislation. Section 502B(a)(1) of the Foreign Assistance Act

of 1961 has recently been amended to provide that "a principal goal of the foreign policy of the United States is to promote the increased observance of internationally recognized human rights by all countries."

Thus our new policy is in keeping with our tradition, our international obligations and our laws. It draws its strength from the values of the American people. And it has been endorsed and supported by the Congress.

III

As we move to carry out our new policy, we realize full well that we as a nation must accept the limits both of our power and of our wisdom. No surer recipe for defeat of our goals could be found than in a rigid, hubristic effort to impose our values on others. The importance of our goals demands our most serious, practical efforts. Rigidity in our actions would be no less damaging than indifference in our attitude.

We seek results, and can only achieve them if we tailor our activities as a government to the case at hand. In each instance, we will consider the following factors in order to determine whether and how to act.

1. A first set of factors concerns the character of the situation we confront. This includes:

- the nature and extent of the violations or deprivations;
- whether there is a pattern to the violations and, if so, whether the trend is toward or away from concern for human rights,
- We have to consider the degree of governmental control and responsibility; and
- whether there may be a valid security justification for the conduct in question.
- And, finally, the willingness of the authorities involved to permit independent, outside investigation.

2. A second set of factors concerns the prospects for effectiveness:

- whether our action will be useful in promoting the overall cause of human rights;
- whether it will actually improve the condition of human rights at hand or rather be likely to make it worse;
- whether the government involved or a majority of its citizens is receptive to our interest and efforts;
- whether others will work with us, including private,

national and international organizations dedicated to furthering human rights; and

- whether our sense of values and decency prompts us to speak out or take action anyway, even though there is only a remote chance of making our influence felt.

3. A third set of factors that we must consider as we decide on our action relates to maintaining a proper sense of perspective:

- whether we have steered away from the selfrighteous and strident, remembering that our own record is not unblemished;
- whether we have been sensitive to genuine threats to the security of the society, realizing that outbreak of armed conflict would in itself pose a serious threat to human rights.
- wheather we have considered all the rights at stake. If, for instance, we reduce aid to a government that violates the political rights of its citizens, we might risk penalizing the hungry and poor, who bear no responsibility for the abuses of their government.

These are the factors which must help us decide what approaches or mechanisms to use. The means available range from quiet diplomacy in all its varieties to public pronouncements. Whenever possible, we will use positive steps of encouragement and inducement. We will offer strong support to governments that are making good efforts. Those that are not must know that we may have to resort to withdrawal of economic or military assistance. We will always try to act in concert with other countries, through the various multilateral mechanisms.

The ultimate decision of whether and how to act is a matter for informed and careful judgment. There is no computer program or mathematical formula which will provide an automatic answer.

Some might argue that this is mere pragmatism. But our challenge is to find practical approaches in the service of our principles. We expect to be judged as to whether we have done so.

Let me also be clear that our aim is to encourage respect for human rights, not to force our way or intervene in the internal affairs of others. We may sometimes choose, and under our laws we may sometimes be required, to withhold or reduce our aid or take other steps. However, we will do so not to penalize but to encourage. It is no intervention in the affairs of others for us to express

our beliefs; those beliefs are strong and unwavering. We will not hesitate to state them, without polemics but without apology, when we think it is useful to do so.

Our policy is global, to be applied within our own society as well as abroad. We will accept constructive criticism as well as offer it.

IV

No one should suppose that we are working in a vacuum. We draw great encouragement from the work being done by others as well.

The United Nations system is central to this cooperative endeavor. That is why the President stressed pursuit of human rights in his speech before the General Assembly last month. That is why he is pressing for US ratification of four important UN covenants and conventions furthering human rights, and why we are trying to strengthen the human rights machinery within the United Nations.

And that is an important reason why we have moved to comply with UN sanctions against Rhodesia. One of the first acts of this Administration was to seek, and to gain, repeal of the Byrd Amendment, which placed us in violation of these sanctions and thus in violation of international law. We are supporting other diplomatic efforts within

the UN to promote basic economic and political rights in Namibia and throughout southern Africa.

We believe that regional organizations can play a critical role in promotion of human rights. The President's speech this month before the OAS underscored the need to combat abuses of individual freedom. Specifically, he indicated that the United States will sign and seek Senate approval of the American Convention on Human Rights. We will continue to work to strengthen the machinery of the Inter-American Human Rights Commission. This will include efforts to schedule annual visits to all OAS member nations and annual debates on human rights conditions, and the expansion of the inter-American educational program on human rights.

The US is seeking increased consultation with other countries -- both in terms of joint programs on economic assistance and more general efforts to promote human rights. It is a legitimate and important item for the agenda -- in our bilateral talks, in consultations with the European Community, in the OECD, in international summitry, and at the United Nations.

We are looking toward meetings in Belgrade this summer and fall to encourage progress in carrying out the Final Act of the Conference on Security and Cooperation in Europe.

Meaningful implementation of the so-called Basket III of that agreement would ease such practical human problems as family reunification, binational marriages, travel for personal and professional reasons, and access to information.

V

We prefer to promote human rights as much as possible through positive programs, affirming human dignity in the broadest sense. We thus look to use of economic assistance -- whether bilateral or through the international financial institutions -- as a means to foster basic human rights.

-- We have proposed a 20% increase in US foreign economic assistance for FY 1978.

-- We are moving to expand AID's program for "New Initiatives in Human Rights," as a complement to the so-called "New Directions" program which seeks to get the benefits of our aid to those most in need abroad.

-- AID's agenda for action on human rights will complement work underway at the US Information Agency and the State Department's Bureau of Educational and Cultural Affairs. Such programs revolve around promotion of pluralism: support for law in society, a free press, viable labor movement, an open educational system, and dynamic community action.

-- Since most of our information suggests that women suffer more violations of human rights than do men, we are exploring ways to assure that our human rights efforts reach out to all, regardless of sex.

Just as we are working with other nations and international organizations, public and private, so, too, are we stressing increased collaboration with the Congress and the private sector.

We are complying with current legislation that brings human rights considerations directly into our decisions in several international financial institutions. At the same time, we are working with the Congress to find the most effective way to combine our concern for human rights with our parallel commitment to international cooperation on economic development. We are keeping a close monitor on our security assistance programs, particularly to the observance of human rights as specified in legislation. This concern is already reflected in cuts of aid to some countries.

In addition, we welcome the work of individual American citizens and private organizations -- such as religious groups and foundations -- in promoting human rights and following through with commitments of time, money, and compassion.

VI

But even having taken these initiatives, furtherance of human rights would be an empty enterprise if we Americans were not prepared to improve our own performance at home. We have therefore removed all restrictions on American travel abroad and are proceeding with plans for liberalizing our visa policies. We support legislation and necessary administrative action to expand our refugee and asylum policies, and to permit more victims of repressive regimes to enter the United States.

During this last year, the United States spent some \$475 million on assistance to refugees around the world, and we accepted 31,000 refugees for permanent resettlement in this country. Programs like these will continue.

VII

What results can we expect from such efforts? It is important to recognize from the start that we are embarked on a long journey. Some goals we can seek in a relatively short period of time; most are for the longer term.

We may justifiably seek, for example, a rapid end to such gross violations as those cited in our legislation: "torture, or cruel, inhumane or degrading treatment or

punishment, or prolonged detention without charges..."

Similarly, we can expect rapid results from immediate shipments of food aid when natural disaster threatens starvation. No less important, although more difficult, is the longer term effort to help others increase their own production of food -- and to encourage processes by which the benefits of economic development go to those most in need.

The promotion of some of the other human rights is a broader challenge. We cannot expect the results to be immediate or obvious or overwhelming. There is little that we can mandate in the governmental systems of other nations. Nor do we seek to do so. But we do intend to let all other countries know where we stand.

Our policy on human rights reflects the tradition of practical idealism of the American people. We recognize that many nations of the world are organized on authoritarian societies. But our faith in the rights and dignity of the individual as the highest expression of man's nature encourages us to believe that in the long run people in every society, each according to their own preferences, will find their own way to give expression to this fundamental aspiration. We have seen evidence of this in the way the Helsinki principles and the Declaration of Human

Rights have found resonance in the hearts of people in many countries, according to their local circumstances. Our task is to sustain this faith, by our example and our encouragement, wherever and whenever we can do so constructively.

In his inaugural address, three months ago, President Carter said, "Because we are free we can never be indifferent to the fate of freedom elsewhere. Our moral sense dictates a clearcut preference for those societies which share with us an abiding respect for individual human rights."

At the United Nations, the President delivered the same message clearly to all nations. Again, two weeks ago, at a meeting of the Organization of American States, he underlined his determination that concern for human rights be accorded high priority in this Administration.

He said, "Our own concern for these values will naturally influence our relations with the countries of this hemisphere and throughout the world. You will find this country eager to stand beside those nations which respect human rights and promote democratic values."

He spoke to an assemblage of diplomats. But he also spoke to the people of Latin America -- to the campesinos

and the urban workers, to the intellectuals, to the political leaders and to the military.

I believe that call is already having an effect on the way in which other governments and other peoples view themselves as well as their relations with us. Democratic elements abroad can once again find encouragement in our stance. For the values we express are not held uniquely by Americans. They find expression and support across the world.

We seek these results because they are right and because we too will benefit. Our idealism and our self-interest coincide.

If our policies were designed only to protect a status quo, our ideas would lose their meaning and their dynamism. Few can doubt that our own well-being, and even our security, is enhanced in a world which shares common values, and in which prosperity and economic justice create the conditions for peace.

Nor should we forget that we always risk paying a serious price when we become identified with repression. Its victims, if they gain power, are not easily disposed to forget our ties with their tormentors.

The greatest risk we run, however, is more subtle. Nations, like individuals, limit their potential when they

limit their goals, and what judgment could be sorrier than failure to try? The American people understand this. They will support foreign policies that reflect our traditional values and beliefs. To offer less to our public is to define America and Americans in ways they will not, and should not, accept.

America fought for freedom in 1776 and in two world wars. We have offered haven to the oppressed, and millions came to our shores. We have shared our resources in times of tragedy abroad, in the great hunger in Ireland in 1847, as in the Marshall Plan and Point Four program one hundred years later.

Our attraction to other nations and other peoples has never been limited to the power of our military or the bounty of our economy. They have been drawn as well by the message of our Revolution, the message of individual human freedom. That message has been our great national asset in times past. So it will be again.

THE WHITE HOUSE
WASHINGTON

MEMORANDUM

TO: Mrs. Carter
FROM: Thomas E. Bryant *TEB*
SUBJECT: Final Report of the Task Force on
Responsible Decisions about Alcohol
DATE: April 26, 1977

The President asked that someone on the Mental Health Commission review this Report. Our comments are attached.

I will forward the Report to our Task Panel on Prevention for their consideration as they develop their Report to the Commission.

THE PRESIDENT'S COMMISSION ON MENTAL HEALTH
STAFF COMMENTS ON FINAL REPORT OF THE TASK FORCE
ON RESPONSIBLE DECISIONS ABOUT ALCOHOL

This is the Final Report of a special task force of the Education Commission of the States (ECS). The task force was created in 1973 and has as its major goal the development of a national policy toward the use and nonuse of alcoholic beverages.

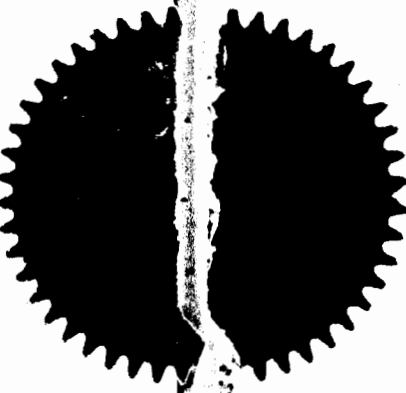
The Summary Final Report provides a useful history of alcohol-related laws, programs, and public attitudes toward drinking.

The focus of the Report is on the reduction of alcohol-related problems. It outlines programmatic and legislative mechanisms for developing skills and attitudes required to generate responsible decisions about alcohol use or nonuse. It stresses use of educational methods and techniques to prevent alcohol-related problems.

The entire Report seems sound, reasonable, and, essentially non-controversial. In line with the tradition of the ECS, it leans heavily in the direction of developing broad-based public consensus on a regional basis.

This is a good document for use of the Task Panels of the Mental Health Commission.

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*Rosalyn - Mandy
Someone on street
Health Comm this
go over I*

TASK FORCE ON RESPONSIBLE DECISIONS ABOUT ALCOHOL

Final Report (A Summary)

THE WHITE HOUSE

WASHINGTON

April 12, 1977

BRIEF MEETING WITH JOHN C. WEST, FORMER GOVERNOR OF SOUTH CAROLINA AND
CHAIRMAN OF THE TASK FORCE ON RESPONSIBLE DECISIONS ABOUT ALCOHOL,
AND MEMBERS OF THE TASK FORCE

Thursday, April 14, 1977

2:00 P.M. (10 minutes)

The Cabinet Room

From: Lee Dogoloff

I. PURPOSE

To receive the Task Force's final report on alcoholism, alcohol abuse and alcohol related problems.

II. BACKGROUND, PARTICIPANTS, AND PRESS PLAN

A. Background:

John C. West has served for 3 years as Chairman of the Task Force on Responsible Decisions About Alcohol. This task force is a joint effort of the Education Commission of the States and HEW's National Institute on Alcohol and Alcohol Abuse (NIAAA) and is composed of representatives of many different groups - church, legislative, research, alcohol industry, etc. Governor West will present the final report of the task force.

There is some question about the technical quality of the report, but the process of involving all sorts of public and private groups has been valuable. The project will not be refunded.

You served together with John West at one of the beginning panel sessions of the task force in December 1974 at the San Francisco meeting of the North American Congress on Alcohol and Drug Problems. This meeting was memorable because you had announced yourself as a Presidential candidate just a few days previously, and your candidacy received most of the attention at the press conference following the meeting.

B. Participants: See attached list.

C. Press Plan: To be coordinated by Rex Granum.

III. TALKING POINTS

- o Welcome and commend them on their commitment to finding ways to help the problems associated with alcohol misuse.
- o It would be nice if the Federal Government could solve these problems, but it can't. Only through community and public involvement can we begin to address the problems of alcohol misuse. All of us need a better understanding of drinking and what alcohol can do. We need to develop an awareness of the problems, a compassion for the casualties, and a commitment to finding ways to prevent these problems.
- o Highlight the severity of the problems associated with the misuse of alcohol in this country:
 - 10 million Americans have serious problems with alcohol, and they bring pain and hurt to 40 million additional people primarily friends, relatives and co-workers.
 - 35,000 people die accidentally each year, on our highways, at home or at work, and these accidents involve alcohol.
 - 1/3 of all suicides and 1/2 of all murders are alcohol related.
 - 2 1/2 million arrests every year are related to alcohol.
 - the misuse of alcohol costs us over \$30 billion a year, and to this must be added the incalculable cost in human suffering, broken homes, ruined career, and lives lost to hopelessness and defeat.

CC: Tim Smith	Cynthia Wilkes
Nell Yates	Pat Yarham
Rick Hutcheson	Jack Watson
Hamilton Jordan	Jane Fenderson
Jody Powell	Penny Miller
Rex Granum	Fran Voorde
Stuart Eizenstat	Helen Donaldson

THE WHITE HOUSE
WASHINGTON

April 26, 1977

Bob Lipshutz -

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

cc: The Attorney General
The Vice President
Stu Eizenstat
Jack Watson

Re: Special Prosecutor
Legislation

THE WHITE HOUSE
WASHINGTON

Mr. President:

Attached is the Attorney General's memorandum on "Special Prosecutor Legislation."

The issues raised in Bell's memo are set out in a decision memo by Lipshutz/McKenna at the first tab. Jack and Stu concur with all of Lipshutz/McKenna's recommendations.

Further comments from Stu are attached at the second tab.

Rick



Office of the Attorney General

Washington, D. C. 20530

APR 11 1977

MEMORANDUM FOR THE PRESIDENT

Re: Special Prosecutor

If we were writing on a clean slate, we might propose a statute providing for appointment of a temporary special prosecutor only in extraordinary instances involving well-founded allegations of criminal conduct by the President, Vice President and the Attorney General. The power of appointment would be vested in the executive branch, with no restrictions or review except perhaps for a prohibition on the appointment of those close to the Attorney General or the President. The power of removal would also be vested in the executive branch, subject to certain assurances of independence for the special prosecutor.

The principal bills in the Congress--the Ribicoff bill in the Senate and the Mann bill in the House--depart from the approach described above in significant respects, and changes must be made if acceptable legislation is to result. The attached proposed legislation cures what we believe to be the most objectionable aspects of the pending bills, but inasmuch as Congress appears to be committed to certain of the proposals contained in the bills, concessions on our part inevitably will be required.

1. Limitations on the Appointments of a Special Prosecutor

First, and most importantly, the instances in which a special prosecutor is appointed must be limited. Both bills in essence require that a special prosecutor be appointed upon the receipt of "any specific information" respecting a criminal offense by numerous specified officials unless within sixty days the Attorney General finds such information to be unsubstantiated. The large number of officials covered (the Ribicoff and Mann bills include all Cabinet members, Under Secretaries and even Level IV employees in the White House), together with the short investigatory period, would lead to frequent appointments of a special prosecutor--and the concomitant dangers of a loss of public confidence in the Department, the undermining of Department morale, damaging publicity to the individual under investigation, the potential for abuse and for departure from established policies and guidelines, and the disruption of the Department's normal processes. The attached bill mitigates these problems by doubling the investigatory time period to 120 days and by limiting the bill's scope

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to include only the President, Vice President, Attorney General, Deputy Attorney General, and the Directors of the FBI and CIA. While this list goes beyond what we might prefer, it is our best judgment that the officials specified are the minimum which we would have a chance of selling to Congress; in fact, Congress may yet insist on including the Cabinet and perhaps even other high level officers.

It is also important, in order to avoid numerous special prosecutors operating contemporaneously, to permit the referral of more than one matter to each special prosecutor. The dangers of allowing a multitude of special prosecutors to have the full powers of the Attorney General and full access to Justice Department records and resources make the system proposed in the present bills unacceptable. Not only might this widely dispersed authority be extremely disruptive of the Department's work, but it also lends itself to abuse, particularly since it may not be subject to Department guidelines or to the usual standards of accountability.

2. Appointment Authority

Both bills provide that a special prosecutor be appointed by a special court; it is this provision which raises the most serious constitutional question. The Department in the past has questioned the constitutionality of this approach, on the ground that it violates the principle of separation of powers and imposes on the courts a non-judicial task; these arguments take on added significance in light of the important cases that are likely to arise. Moreover, this approach reflects a distrust of the Attorney General which cannot help but further undermine public confidence in him and in the Department.

Notwithstanding these considerations, the legislation which we propose provides for a court appointment of a special prosecutor. Although there may be some risk in this approach, most constitutional authorities are of the view that a judicial appointment in extraordinary circumstances would be constitutionally proper. In addition, this approach has the advantage of not embroiling the Attorney General in political controversy if resort to a special prosecutor is required. Moreover, after two separate sets of hearings, both the Senate and House Committees appear firmly committed to a judicial appointment. Executive appointment would be allowed, if at all, only if review in the courts or Congress were also provided--and the proposals implementing this sort of review are, to us, even more unwise and more constitutionally dubious than a straightforward judicial appointment.

Finally, it should be noted that you may be committed to some extent to judicial appointment. In your speech to the ABA on August 11, 1976,

you said: "If a special prosecutor is needed, we should strengthen the Senate bill and let the courts and not the President make the appointment." This position makes opposition to court appointment awkward at best; in light of this statement and the practical alternatives, we would recommend acceptance of judicial appointment. *ck*

3. Power of Removal

With respect to the power of removal, the present bills vary in their approach. Ribicoff's bill lodges that power in the Attorney General, while Mann's bill vests this power in the courts. Both constitutional and practical considerations support leaving this power with the Attorney General. The Executive has the constitutional obligation to execute the laws, and the special prosecutor is acting for the President and the Attorney General in the performance of that constitutional duty. Without the power of removal, the ability of the President and the Attorney General to fulfill their responsibility might be compromised. Moreover, it would be improper to vest the control or supervision of the enforcement of the laws in the legislative or judicial branches. *What if AG is subject of investigation?* *ck*

4. Restrictions on Removal

Both bills provide for removal of the special prosecutor, other than by impeachment and conviction, only for extraordinary impropriety or incapacitation. This is a limitation on the Executive's responsibility to execute the laws and as such must be regarded as constitutionally suspect. While the Supreme Court has at times allowed the Executive's power of removal to be restricted due to certain officials' need for independence from the Executive, such instances involved officials with quasi-legislative and quasi-judicial duties and not ones with purely executive functions. We have thus provided for no such restrictions in our proposed legislation; but we have included, in order to meet Congress' concerns here, a provision requiring a report by the Attorney General to Congress of his reasons for the removal.

Another form of restriction on removal, proposed by the Ribicoff bill, is allowing for court review of a removal by the Attorney General. This provision is objectionable because it creates the same constitutional problem as placing the initial power of removal in the courts--at least if the courts are empowered to order reinstatement. Congress may be reluctant to forego any sort of review; but our accession to judicial appointment, as well as our other proposals respecting the independence of the Department (discussed below), may lead Congress to accept this.

5. Confidentiality

The problems of adverse publicity arising from the appointment of a special prosecutor are troubling, particularly since there appears to be no entirely satisfactory way to deal with them. The most satisfactory approach, adopted in our proposed bill, is to avoid resort to a special prosecutor in all but extraordinary instances and even then provide safeguards to ensure as much confidentiality as possible--for example, by allowing a confidential referral to an existing special prosecutor or a United States Attorney. Such a proposal would hopefully keep a matter under investigation about as quiet as if the Department itself remained in charge.

Not too important or possible

6. Other Proposals Respecting an Independent Department of Justice

The legislation which we suggest also includes other proposals to make the Department of Justice independent of political influence. These proposals may lead Congress to accept the different approaches we have taken with respect to a special prosecutor. The proposals included are:

- (1) A requirement that regulations be promulgated respecting the logging of outside contacts. *etc*
- (2) A requirement that regulations be promulgated on the disqualification of Department of Justice officers or employees for conflicts of interest. *etc*
- (3) A legislative mandate for the Office of Professional Responsibility. *?*
- (4) An application of the Hatch Act to all officers and employees of the Department. *OK*

7. Conclusion

We believe that the attached legislation will achieve within appropriate limits your pledge to make the Department of Justice independent of politics. Although our proposals regarding a special prosecutor differ in significant respects from the pending bills, the overall approach, together with our agreement with Congress on the matter of appointment, should place us in a strong position to gain acceptance of this approach.

With your approval, I will take this proposal to Congress and will begin discussions with Senator Ribicoff and Congressman Mann at the staff level to seek amendments to their bills to reflect the approach outlined herein.

Enclosure

Griffin B. Bell

Griffin B. Bell
Attorney General

THE WHITE HOUSE

WASHINGTON

April 20, 1977

MEMORANDUM FOR THE PRESIDENT

FROM:

ROBERT LIPSHUTZ
MARGARET MCKENNA

mmk

SUBJECT:

Special Prosecutor Legislation

Congressional hearings on this legislation are scheduled for May 3 and 4. The Department of Justice needs your decisions on the issues below in order to negotiate with Senator Ribicoff and Congressman Mann prior to the hearings.

I. For which officials ^{could} should a special prosecutor be appointed?

A. Alternatives

*I presume spec pros shld be made
appt would be extraordinary
only in extraordinary
circumstances*

✓ 1. Ribicoff and Mann Bills. They would cover conduct by the President, Vice President, officials appointed to Level I or Level II positions, employees in the Executive Office of the President compensated at the rate not less than that for Level IV appointments, the Director of the FBI, and a national campaign manager or chairman of any national campaign committee seeking election or reelection of the President. (Recommend).

2. Attorney General's Bill. It would cover the President, Vice President, Attorney General, Deputy Attorney General and Directors of the CIA and the FBI.

3. Other. The scope could be further broadened to include all persons appointed by the President with the advice and consent of the Senate.

B. Considerations

1. Campaign Commitment. This point was not addressed in the campaign except to say that it should cover "high government officials." However, when this phrase was used in the context of your rules on financial disclosure and conflicts of interest, also designed to achieve high morality in Government, it has meant all appointments requiring Senate approval.

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2. Pro. The recommended alternative would apply to many of the prosecutions brought by the Watergate Special Prosecutor; for example, John Connolly, Maurice Stans, H. R. Haldeman, John Ehrlichman and John Dean. The Attorney General's bill would not and so could be criticized for narrowing existing practice and not addressing the circumstances that generated this legislation.

3. Con. The broad coverage of the Ribicoff and Mann bills might lead to frequent appointments of a special prosecutor with the concomitant dangers of loss of public confidence in the Department of Justice, the undermining of Department morale, damaging publicity to the individual under investigation, and the disruption of the Department's normal processes.

II. Who should have the authority to appoint the special prosecutor?

A. The Ribicoff and Mann bills as well as the Attorney General's bill give this authority to the judiciary. This is also the position you took during the campaign and the position we recommend. The other alternative is to keep the authority within the Executive Branch with or without reviews by the courts or the Congress. This would avoid the constitutional issue of separation of powers as well as a precedent for restricting the Presidential power of appointment. OMB has expressed these concerns:

B. ☒ Approve appointment by judiciary. (Watson recommends)
☐ Disapprove.

III. Who should have authority to remove the special prosecutor?

A. Alternatives

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2. Mann Bill. By the judiciary only for extraordinary misconduct. (Recommend).

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*No preference
why not
use the
"Santorsky"
system?*

3. Attorney General's Bill. By the Attorney General. However, there is no requirement for cause before the Attorney General can remove nor is the decision reviewable by a court. It would require a report of the reasons to the Congress.

B. Considerations

1. Pro. The Mann bill avoids possible repetition of the abuse of authority by the Executive Branch that occurred when the Attorney General fired Archibald Cox. It also avoids separating the power of removal from the authority that has the power to appoint.

2. Con. Placing removal authority outside the Executive Branch raises constitutional questions because it is the Executive that has the obligation to execute the laws and the special prosecutor is acting for the President in the performance of that duty. Even if removal authority is given to the Executive, limitation on its exercise raises the same question.

IV. Should your plan for a special prosecutor be presented as a substitute bill or as specific amendments to the Ribicoff and Mann bills?

- A. ☒ Proceed by negotiating amendments (if any) to the Ribicoff and Mann bills. (Recommend).
- B. ☐ Use the Attorney General's substitute bill incorporating my decisions above.

Congress has worked over two years on these bills and we should have serious reason to attempt to substitute our own version. (Watson agrees)

THE WHITE HOUSE
WASHINGTON

April 22, 1977

MEMORANDUM FOR: THE PRESIDENT
FROM: STU EIZENSTAT *Stu*
SI LAZARUS *SL*
SUBJECT: Special Prosecutor Legislation

These are our comments on the Attorney General's memorandum of April 11, regarding legislation to create a special prosecutor.

In general, we concur in the Attorney General's recommendation that you support the concept of a temporary, court-appointed special prosecutor to handle offenses by high government officials. However, we do not concur in some of his subsidiary recommendations to restrict the jurisdiction and independence of the special prosecutor which are, we feel, inconsistent with your campaign posture.

Our reactions to the Attorney General's individual recommendations follow:

1. We concur in the Attorney General's recommendation to provide for 120 days investigation before a special prosecutor is appointed. However, we believe that the special prosecutor's jurisdiction should extend to all cabinet-rank officials and to policy-making members of the White House staff. We fear that supporting a proposal weaker than that would appear to contradict the strong anti-corruption stance you took during the campaign. There seems little reason to exclude the rest of the Cabinet from the ambit of the special prosecutor's jurisdiction.

2. We strongly concur in the Attorney General's recommendation that you support the concept of temporary court appointed special prosecutor, which you endorsed repeatedly during the campaign.

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3. & 4. Regarding the procedure for removing a special prosecutor, we believe that this power should either be lodged in the appointing court, or, if lodged in the Attorney General, should be confined to cases of "extraordinary impropriety." That formula was the standard for removal set by Attorney General Elliot Richardson's regulations establishing the office held by Special Prosecutors Cox, Jaworski, and Ruth. We believe that it would be inconsistent with your general posture on ethics in government to support anything less than that. Because of the Saturday Night Massacre, there remains widespread concern that a President or his principal aides, like the Attorney General, may not be trustworthy repositories of unrestricted power to remove a special prosecutor. During the campaign, in supporting the independent attorney general concept, you often stated that he should "not be removed except for malfeasance." (Code of Ethics, page 2). To oppose applying such a standard to the special prosecutor appointed to investigate high government officials would appear to be a substantial retreat. Furthermore, in the unhappy and unlikely event that a high Cabinet or White House official did have to be investigated or prosecuted, it would be easier to separate yourself from the situation if the prosecutor in charge were clearly outside your control.

5. We concur in the Attorney General's recommendation that special prosecutorial investigations be kept as confidential as possible, prior to indictment.

6. Regarding his "other" proposals, set out at page 4:

atc
(1) On logging, you have decided, in response to my memorandum dated March 10, to require by executive order that high officials in all agencies and the White House (not simply Justice) log their outside contacts. The Department of Justice has completed a memorandum outlining such an executive order, and we expect to submit it before the end of this month.

(2) & (3) We concur in the Attorney General's recommendation here to strengthen conflict of interest standards and administration, but recommend that these steps be supported on a government-wide basis, not merely for the

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ok
Justice Department. A decision memorandum on conflicts of interest standards for the government from Bob Lipshutz and myself will be reaching you about the same time as this memorandum.

ok
(4) We concur in the proposal to apply Hatch Act restrictions to the Attorney General and other high Justice officials. You repeatedly endorsed this concept during the campaign, notably in the Code of Ethics.

ok
We recommend that your position on the special prosecutor issue be expressed in a message to Congress on Ethics in Government. The message should also express your position on various conflict of interest legislative issues. As noted above, a memorandum on these issues from Bob Lipshutz and myself is currently on its way to you.

Bob Lipshutz and Margaret McKenna have written a decision memorandum on the major issues raised by the Attorney General's memorandum. We concur in their recommendations.

**Electrostatic Copy Made
for Preservation Purposes**

THE WHITE HOUSE
WASHINGTON

(filed for its only)

Date: April 22, 1977

MEMORANDUM

FOR ACTION:

The Vice President^{al}
Midge Costanza Jack Watson - *concur*
Stu Eizenstat *Miked - attached*
Hamilton Jordan
Frank Moore
Jody Powell

FOR INFORMATION:

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Bob Lipshutz/Margaret McKenna memo 4/20 re Special
Prosecutor Legislation.

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: IMMEDIATE TURNAROUND

DAY:

DATE:

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☐ No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE

WASHINGTON

April 20, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: ROBERT LIPSHUTZ *mmk*
MARGARET MCKENNA

SUBJECT: Special Prosecutor Legislation

Congressional hearings on this legislation are scheduled for May 3 and 4. The Department of Justice needs your decisions on the issues below in order to negotiate with Senator Ribicoff and Congressman Mann prior to the hearings.

I. For which officials should a special prosecutor be appointed?

A. Alternatives

_____ 1. Ribicoff and Mann Bills. They would cover conduct by the President, Vice President, officials appointed to Level I or Level II positions, employees in the Executive Office of the President compensated at the rate not less than that for Level IV appointments, the Director of the FBI, and a national campaign manager or chairman of any national campaign committee seeking election or reelection of the President. (Recommend).

_____ 2. Attorney General's Bill. It would cover the President, Vice President, Attorney General, Deputy Attorney General and Directors of the CIA and the FBI.

_____ 3. Other. The scope could be further broadened to include all persons appointed by the President with the advice and consent of the Senate.

B. Considerations

_____ 1. Campaign Commitment. This point was not addressed in the campaign except to say that it should cover "high government officials." However, when this phrase was used in the context of your rules on financial disclosure and conflicts of interest, also designed to achieve high morality in Government, it has meant all appointments requiring Senate approval.

2. Pro. The recommended alternative would apply to many of the prosecutions brought by the Watergate Special Prosecutor; for example, John Connolly, Maurice Stans, H. R. Haldeman, John Ehrlichman and John Dean. The Attorney General's bill would not and so could be criticized for narrowing existing practice and not addressing the circumstances that generated this legislation.

3. Con. The broad coverage of the Ribicoff and Mann bills might lead to frequent appointments of a special prosecutor with the concomitant dangers of loss of public confidence in the Department of Justice, the undermining of Department morale, damaging publicity to the individual under investigation, and the disruption of the Department's normal processes.

II. Who should have the authority to appoint the special prosecutor?

A. The Ribicoff and Mann bills as well as the Attorney General's bill give this authority to the judiciary. This is also the position you took during the campaign and the position we recommend. The other alternative is to keep the authority within the Executive Branch with or without reviews by the courts or the Congress. This would avoid the constitutional issue of separation of powers as well as a precedent for restricting the Presidential power of appointment. OMB has expressed these concerns:

- B. ☐ Approve appointment by judiciary.
☐ Disapprove.

III. Who should have authority to remove the special prosecutor?

A. Alternatives

1. Ribicoff Bill. By the Attorney General only for extraordinary misconduct followed by a report to the Congress stating the reasons for removal. Removal would also be subject to challenge in court.

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2. Con. Placing removal authority outside the Executive Branch raises constitutional questions because it is the Executive that has the obligation to execute the laws and the special prosecutor is acting for the President in the performance of that duty. Even if removal authority is given to the Executive, limitation on its exercise raises the same question.

IV. Should your plan for a special prosecutor be presented as a substitute bill or as specific amendments to the Ribicoff and Mann bills?

- A. _____ Proceed by negotiating amendments (if any) to the Ribicoff and Mann bills. (Recommend).
- B. _____ Use the Attorney General's substitute bill incorporating my decisions above.

Congress has worked over two years on these bills and we should have serious reason to attempt to substitute our own version.

THE WHITE HOUSE
WASHINGTON 1977 APR 22 PM 3 57

April 22, 1977

MEMORANDUM FOR

THE VICE PRESIDENT
MIDGE COSTANZA
STUART EIZENSTAT
HAMILTON JORDAN
FRANK MOORE
JODY POWELL
JACK WATSON

FROM:

Margaret McKenna *mmk*

SUBJECT:

Special Prosecutor

The attached memorandum for the President should be incorporated with the action package sent you from Rick Hutcheson on the above subject.

Attachment



Office of the Attorney General

Washington, D. C. 20530

APR 11 1977

MEMORANDUM FOR THE PRESIDENT

Re: Special Prosecutor

If we were writing on a clean slate, we might propose a statute providing for appointment of a temporary special prosecutor only in extraordinary instances involving well-founded allegations of criminal conduct by the President, Vice President and the Attorney General. The power of appointment would be vested in the executive branch, with no restrictions or review except perhaps for a prohibition on the appointment of those close to the Attorney General or the President. The power of removal would also be vested in the executive branch, subject to certain assurances of independence for the special prosecutor.

The principal bills in the Congress--the Ribicoff bill in the Senate and the Mann bill in the House--depart from the approach described above in significant respects, and changes must be made if acceptable legislation is to result. The attached proposed legislation cures what we believe to be the most objectionable aspects of the pending bills, but inasmuch as Congress appears to be committed to certain of the proposals contained in the bills, concessions on our part inevitably will be required.

1. Limitations on the Appointments of a Special Prosecutor

First, and most importantly, the instances in which a special prosecutor is appointed must be limited. Both bills in essence require that a special prosecutor be appointed upon the receipt of "any specific information" respecting a criminal offense by numerous specified officials unless within sixty days the Attorney General finds such information to be unsubstantiated. The large number of officials covered (the Ribicoff and Mann bills include all Cabinet members, Under Secretaries and even Level IV employees in the White House), together with the short investigatory period, would lead to frequent appointments of a special prosecutor--and the concomitant dangers of a loss of public confidence in the Department, the undermining of Department morale, damaging publicity to the individual under investigation, the potential for abuse and for departure from established policies and guidelines, and the disruption of the Department's normal processes. The attached bill mitigates these problems by doubling the investigatory time period to 120 days and by limiting the bill's scope

to include only the President, Vice President, Attorney General, Deputy Attorney General, and the Directors of the FBI and CIA. While this list goes beyond what we might prefer, it is our best judgment that the officials specified are the minimum which we would have a chance of selling to Congress; in fact, Congress may yet insist on including the Cabinet and perhaps even other high level officers.

It is also important, in order to avoid numerous special prosecutors operating contemporaneously, to permit the referral of more than one matter to each special prosecutor. The dangers of allowing a multitude of special prosecutors to have the full powers of the Attorney General and full access to Justice Department records and resources make the system proposed in the present bills unacceptable. Not only might this widely dispersed authority be extremely disruptive of the Department's work, but it also lends itself to abuse, particularly since it may not be subject to Department guidelines or to the usual standards of accountability.

2. Appointment Authority

Both bills provide that a special prosecutor be appointed by a special court; it is this provision which raises the most serious constitutional question. The Department in the past has questioned the constitutionality of this approach, on the ground that it violates the principle of separation of powers and imposes on the courts a non-judicial task; these arguments take on added significance in light of the important cases that are likely to arise. Moreover, this approach reflects a distrust of the Attorney General which cannot help but further undermine public confidence in him and in the Department.

Notwithstanding these considerations, the legislation which we propose provides for a court appointment of a special prosecutor. Although there may be some risk in this approach, most constitutional authorities are of the view that a judicial appointment in extraordinary circumstances would be constitutionally proper. In addition, this approach has the advantage of not embroiling the Attorney General in political controversy if resort to a special prosecutor is required. Moreover, after two separate sets of hearings, both the Senate and House Committees appear firmly committed to a judicial appointment. Executive appointment would be allowed, if at all, only if review in the courts or Congress were also provided--and the proposals implementing this sort of review are, to us, even more unwise and more constitutionally dubious than a straightforward judicial appointment.

Finally, it should be noted that you may be committed to some extent to judicial appointment. In your speech to the ABA on August 11, 1976,

you said: "If a special prosecutor is needed, we should strengthen the Senate bill and let the courts and not the President make the appointment." This position makes opposition to court appointment awkward at best; in light of this statement and the practical alternatives, we would recommend acceptance of judicial appointment.

3. Power of Removal

With respect to the power of removal, the present bills vary in their approach. Ribicoff's bill lodges that power in the Attorney General, while Mann's bill vests this power in the courts. Both constitutional and practical considerations support leaving this power with the Attorney General. The Executive has the constitutional obligation to execute the laws, and the special prosecutor is acting for the President and the Attorney General in the performance of that constitutional duty. Without the power of removal, the ability of the President and the Attorney General to fulfill their responsibility might be compromised. Moreover, it would be improper to vest the control or supervision of the enforcement of the laws in the legislative or judicial branches.

4. Restrictions on Removal

Both bills provide for removal of the special prosecutor, other than by impeachment and conviction, only for extraordinary impropriety or incapacitation. This is a limitation on the Executive's responsibility to execute the laws and as such must be regarded as constitutionally suspect. While the Supreme Court has at times allowed the Executive's power of removal to be restricted due to certain officials' need for independence from the Executive, such instances involved officials with quasi-legislative and quasi-judicial duties and not ones with purely executive functions. We have thus provided for no such restrictions in our proposed legislation; but we have included, in order to meet Congress' concerns here, a provision requiring a report by the Attorney General to Congress of his reasons for the removal.

Another form of restriction on removal, proposed by the Ribicoff bill, is allowing for court review of a removal by the Attorney General. This provision is objectionable because it creates the same constitutional problem as placing the initial power of removal in the courts--at least if the courts are empowered to order reinstatement. Congress may be reluctant to forego any sort of review; but our accession to judicial appointment, as well as our other proposals respecting the independence of the Department (discussed below), may lead Congress to accept this.

5. Confidentiality

The problems of adverse publicity arising from the appointment of a special prosecutor are troubling, particularly since there appears to be no entirely satisfactory way to deal with them. The most satisfactory approach, adopted in our proposed bill, is to avoid resort to a special prosecutor in all but extraordinary instances and even then provide safeguards to ensure as much confidentiality as possible—for example, by allowing a confidential referral to an existing special prosecutor or a United States Attorney. Such a proposal would hopefully keep a matter under investigation about as quiet as if the Department itself remained in charge.

6. Other Proposals Respecting an Independent Department of Justice

The legislation which we suggest also includes other proposals to make the Department of Justice independent of political influence. These proposals may lead Congress to accept the different approaches we have taken with respect to a special prosecutor. The proposals included are:

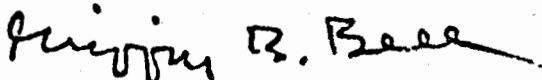
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- (4) An application of the Hatch Act to all officers and employees of the Department.

7. Conclusion

We believe that the attached legislation will achieve within appropriate limits your pledge to make the Department of Justice independent of politics. Although our proposals regarding a special prosecutor differ in significant respects from the pending bills, the overall approach, together with our agreement with Congress on the matter of appointment, should place us in a strong position to gain acceptance of this approach.

With your approval, I will take this proposal to Congress and will begin discussions with Senator Ribicoff and Congressman Mann at the staff level to seek amendments to their bills to reflect the approach outlined herein.

Enclosure


Griffin B. Bell
Attorney General

Date: April 22, 1977

MEMORANDUM

FOR ACTION:

The Vice President
Midge Costanza Jack Watson
Stu Eizenstat
Hamilton Jordan
Frank Moore
Jody Powell

FOR INFORMATION:

for review
by B.K.

1977 APR 22 AM 10 07

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Bob Lipshutz/Margaret McKenna memo 4/20 re Special
Prosecutor Legislation.

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: IMMEDIATE TURNAROUND

DAY:

DATE:

ACTION REQUESTED:

☒ Your comments
Other:

STAFF RESPONSE:

☒ I concur.
Please note other comments below:

☐ No comment.

See my notes on
Bob's memorandum
Watson

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required
material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE

WASHINGTON

April 20, 1977

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FROM: ROBERT LIPSHUTZ *mark*
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- gn
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- JW*
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Congress has worked over two years on these bills and we should have serious reason to attempt to substitute our own version.

I agree JW

APR 11 1977

MEMORANDUM FOR THE PRESIDENT

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With your approval, I will take this proposal to Congress and will begin discussions with Senator Ribicoff and Congressman Mann at the staff level to seek amendments to their bills to reflect the approach outlined herein.

Enclosure

Griffin B. Bell
Attorney General

A BILL

To provide for the appointment of a special prosecutor in appropriate cases, to effect certain reorganizations of the Department of Justice, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Department of Justice Act of 1977."

SPECIAL PROSECUTOR

Section 2(a). Title 28, United States Code, is amended by inserting immediately after chapter 37 the following new chapter:

"Chapter 39. Special Prosecutor

- "§ 591. Determination whether to apply for appointment of a special prosecutor.
- "§ 592. Duties of the division of the court.
- "§ 593. Authority and duties of a special prosecutor.
- "§ 594. Reports.
- "§ 595. Removal of a special prosecutor; termination of office.
- "§ 596. Relationship with Department of Justice.
- "§ 597. Termination of effect of chapter."

"§ 591. Determination whether to apply for appointment of a special prosecutor.

"(a)(1) The Attorney General, upon receiving specific information that any of the persons specified in subsection (a)(2) of this section has violated any Federal criminal law, shall conduct, for a period not to exceed one hundred twenty days, such preliminary investigation of the matter as the Attorney General deems appropriate.

"(a)(2) The persons referred to in subsection (a)(1) of this section are --

- "(1) The President or Vice President
- "(2) The Attorney General or Deputy Attorney General
- "(3) The Director of the Federal Bureau of Investigation or the Director of the Central Intelligence Agency.

"(b)(1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter is so unsubstantiated that no further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court specified in section 592 of this title, and the division of the court shall have no power to appoint a special prosecutor.

"(2) This notification shall be by memorandum containing a summary of the information received and a summary of the results of any preliminary investigation.

"(3) This memorandum shall not be revealed to any third party without leave of the division of the court.

"(c)(1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter warrants further investigation or prosecution, or if one hundred twenty days elapse from the receipt of the information without a determination by the Attorney General that the matter is so unsubstantiated as not to warrant further investigation or prosecution, then the Attorney General shall apply to the division of the court for the appointment of a special prosecutor.

"(2) The application shall contain sufficient information to assist the division of the court to select a special prosecutor and to define that special prosecutor's prosecutorial jurisdiction.

"(3) The application shall not be revealed to any third party without leave of the division of the court.

"(d) If, in the course of any Federal criminal investigation other than that described in subsection (a) of this section, the Attorney General, after such preliminary investigation as he deems appropriate, determines that

"(1) The matter warrants further investigation or prosecution; and

"(2) There is a conflict of interest in that

"(A) there is an appearance of impropriety or partiality due to the relationship of the President or the Attorney General to a person under investigation; or

"(B) the President or Attorney General has a substantial personal, financial, or partisan political interest in the outcome of the investigation or prosecution; and

"(3) the disqualification of the Attorney General or other Department of Justice officers or employees pursuant to section 529 of this title would not eliminate such conflict of interest,

then the Attorney General shall apply to the division of the court for the appointment of a special prosecutor.

"§ 592. Duties of the division of the court.

"(a) The division of the court which is referred to in this chapter, and to which functions are given by this chapter, is the division established under section 49 of this title.

"(b) Upon receipt of an application under section 591 (c) or (d) of this title, the division of the court shall appoint an appropriate special prosecutor and shall define that special prosecutor's prosecutorial jurisdiction. A special prosecutor's identity and prosecutorial jurisdiction may be made public upon request of the Attorney General or upon the determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such special prosecutor would be in the best interest of justice.

"(c) The division of the court, upon request of the Attorney General, may assign new matters to an existing special prosecutor or may expand his jurisdiction.

"(d) No person who holds any office of profit or trust under the United States may be appointed as a special prosecutor except that, in the interest of avoiding publicity adverse to the individual under investigation or in cases requiring speedy solutions, the division of the court may appoint a United States Attorney as special prosecutor.

"§ 593. Authority and duties of a special prosecutor.

"(a) Notwithstanding any other provision of law, a special prosecutor appointed under this chapter shall have, with respect to all matters in his jurisdiction under this chapter, full power, and independent authority to --

- "(1) conduct proceedings before grand juries and other investigations;
- "(2) participate in court proceedings and engage in any litigation, including civil and criminal matters, as he deems necessary;
- "(3) appeal any decision of a court in any case or proceeding in which he participates in an official capacity;
- "(4) review all documentary evidence available from any source;
- "(5) determine whether or not to contest the assertion of any testimonial privilege;

- "(6) receive appropriate national security clearances and, if necessary contest in court, including where appropriate participation in in camera proceedings, any claim of privilege or attempt to withhold evidence on grounds of national security;
- "(7) make applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and for purposes of sections 6003, 6004, and 6005, of title 18, United States Code, as amended, a special prosecutor may exercise the authority vested in a United States Attorney or the Attorney General;
- "(8) inspect, obtain, or use the original or copy of any tax return, in accordance with the applicable statutes and regulations, and for purposes of section 6103, of title 26, United States Code, as amended, and the regulations thereunder, a special prosecutor may exercise the powers vested in a United States Attorney or the Attorney General;

"(9) initiate and conduct prosecutions in any court of competent jurisdiction, frame and sign indictments, file informations, and handle all aspects of any case in the name of the United States;

"(b) A special prosecutor appointed under this chapter shall receive compensation at a per diem rate equal to the rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5 of the United States Code.

"(c) For the purposes of carrying out the duties of the office of special prosecutor, a special prosecutor shall have power to appoint, fix the compensation, and assign the duties of such employees as such special prosecutor deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees shall be exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS-18 of the General Schedule under section 5332 of title 5 of the United States Code.

"(d) A special prosecutor may request, and the Department of Justice shall provide to such special prosecutor, assistance which may include affording to such special prosecutor full access to any records, files, or other materials relevant to matters within such special prosecutor's prosecutorial jurisdiction, and providing to such special prosecutor the resources and personnel required to perform such special prosecutor's duties.

"(e) A special prosecutor may accept referral of a matter by the Attorney General, if the matter relates to a matter within the prosecutorial jurisdiction established by the division of the court.

"§ 594. Reports.

"(a) A special prosecutor appointed under this chapter shall, at the conclusion of such special prosecutor's duties, submit to the division of the court a report which shall set forth fully and completely a description of the work of the special prosecutor, including the disposition of all cases brought, and the reasons for not prosecuting any matter within his prosecutorial jurisdiction which was not prosecuted. The report shall be in sufficient detail to allow a determination by the division of the court whether the special prosecutor's work was thoroughly and fairly completed.

"(b) The division of the court may release to the Congress, the public, or to any appropriate person, such portions of a report made under subsection (a) of this section as the division deems appropriate. The division of the court shall take such action as is appropriate to protect the rights of any individual named in such report and prevent undue interference with any pending investigation or prosecution. The division of the court may in its discretion make any portion of a report under this subsection available to any individual named in such report for the

purposes of receiving within a time limit set by the division, of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may in the discretion of the division of the court be included as an appendix to such report.

"§ 595. Removal of a special prosecutor; termination of office.

"(a) A special prosecutor may be removed from office, other than by impeachment and conviction, only by the Attorney General. In the event of any removal, the Attorney General shall promptly submit to the judiciary committees of the Senate and House of Representatives a report describing the reasons for such action in such particularity as is possible without prejudicing the legal rights of any individual or impairing any pending investigation or prosecution. The committee in its discretion may make such report available to the public.

"(b) An office of special prosecutor shall terminate upon the submission by the special prosecutor of written notification to the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such special prosecutor, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. No such submission shall be effective to terminate such office until after the completion and filing of the report required under section 594(a) of this title.

"§ 596. Relationship with Department of Justice.

"(a) The special prosecutor shall be within the Department of Justice but shall have the greatest degree of independence that is consistent with the President's constitutional responsibility to execute the laws and the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice.

"(b) Except as otherwise herein specified or as mutually agreed between the special prosecutor and the Attorney General, the special prosecutor shall be subject to the administrative regulations and policies of the Department of Justice.

"(c) The Attorney General or the Solicitor General may, to the extent provided under existing law, make a presentation to any court as to issues of law raised by any case or proceeding in which a special prosecutor participates in an official capacity or any appeal of such case or proceeding.

"(d) Whenever a matter is in the prosecutorial jurisdiction of the special prosecutor, the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 593(d) of this title and except insofar as the special prosecutor agrees that the such investigations or proceedings may be continued by the Department of Justice, the Attorney General, or the other officers or employees of the Department of

Justice. The special prosecutor shall, however, remain free at all times to withdraw any such agreement and assume sole jurisdiction over such investigations or proceedings in whole or in part.

"§ 597. Termination of effect of chapter.

" This chapter shall cease to have effect five years after the date on which it takes effect, except as to the completion of then-pending matters, which in the judgment of the division of the court require its continuance in effect, with respect to which matters this chapter shall continue in effect until such division determines that such matters have been completed."

(b) The tables of chapters for title 28 of the United States Code and for part II of such title 28 are each amended by inserting immediately after the item relating to chapter 37 the following new item:

"39. Special prosecutor."

ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT SPECIAL PROSECUTORS

SEC. 3(a) Chapter 3 of title 28 of the United States Code is amended by adding at the end the following new section:

"§ 49. Assignment of judges to division to appoint special prosecutors.

"(a) Beginning with the two-year period commencing on the date this section takes effect, the chief judge of the United States Court of Appeals for the District of Columbia shall assign three persons who are judges or justices for each successive two-year period to a division of the United States Court of Appeals for the District of

Columbia to be the special panel of the court for the purposes of chapter 39 of this title.

"(b) Except as provided under subsection (f) of this section, assignment to the division established in subsection (a) of this section shall not be a bar to other judicial assignments during the term of such division.

"(c) In assigning judges or justices to sit on the division established in subsection (a) of this section, priority shall be given to senior retired circuit judges and senior retired justices.

"(d) The chief judge of the United States Court of Appeals for the District of Columbia may make a request to the Chief Justice of the United States, without presenting a certificate of necessity, to designate and assign, in accordance with section 294 of this title, retired circuit court judges of another circuit or retired justices to the division established under subsection (a) of this section.

"(e) Any vacancy in the division established under subsection (a) of this section shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to the division were made.

"(f) No judge or justice who as a member of the division established in subsection (a) of this section participated in a function conferred on the division under chapter 39 of this title involving a special prosecutor shall be eligible to participate in any judicial proceeding involving a matter which involves such special prosecutor

while such special prosecutor is serving in that office or which involves the exercise of such special prosecutor's official duties, regardless of whether such special prosecutor is still serving in that office."

(b) The table of sections for chapter 3 of title 28 of the United States Code is amended by adding at the end the following item:

"49. Assignment of judges to division to appoint special prosecutors."

OUTSIDE CONTACTS, CONFLICTS OF INTEREST, AND OFFICE OF PROFESSIONAL RESPONSIBILITY

Section 4(a). Chapter 31 of title 28, United States Code, as amended by adding at the end the following:

"§ 528. Recording and disclosure of outside contacts.

"(a) The Attorney General shall promulgate rules and regulations respecting the logging of communications, direct or indirect, initiated by persons outside the Department of Justice to high-level officials of the Department of Justice concerning matters under investigation or pending before the courts or requesting that a matter be investigated by the Department of Justice. Such rules and regulations shall specify:

"(1) The officials required to keep such logs;

"(2) The information to be kept in such logs;

"(3) Restrictions on disclosure to preserve and protect the integrity of past or present investigations, prosecutions, or proceedings and to prevent any prejudice to the rights of a defendant or a person under investigation.

"(b) The Attorney General shall, upon request from the Judiciary Committee of the Senate or the Judiciary Committee of the House of Representatives, and subject to the restrictions imposed on disclosure by the regulations promulgated under this section, disclose such logs or any part thereof to such committee.

"§ 529. Disqualification of officers and employees of the Department of Justice.

"The Attorney General shall promulgate rules and regulations which require any officer or employee of the Department of Justice, including a United States Attorney or a member of his staff, to disqualify himself from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or partisan political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

"§ 530. Office of Professional Responsibility.

"(a) There is established within the Department of Justice an Office of Professional Responsibility, which shall be headed by a Counsel on Professional Responsibility appointed by the Attorney General. The counsel shall

be subject to the general supervision and direction of the Attorney General, and shall report directly to the Attorney General, or, in appropriate cases, to the Deputy Attorney General or the Solicitor General.

"(b) Except as to matters which are to be referred to the Special Prosecutor pursuant to chapter 39 of this title, the Counsel on Professional Responsibility shall be responsible for reviewing any information or allegation presented to him concerning conduct by an officer or employee of the Department of Justice that may be in violation of law, of department regulations or orders, or of applicable standards of conduct, and shall undertake a preliminary investigation to determine what further steps should be taken. On the basis of such investigation the counsel shall refer the matter to the appropriate unit within the department or shall recommend to the Attorney General or, in appropriate cases, to the Deputy Attorney General or Solicitor General, what other action, if any, should be taken. The counsel shall undertake such other responsibilities as the Attorney General may direct.

"(c) Nothing in this section shall derogate from the authority of internal inspection units of the Department of Justice and the heads of other units to receive, investigate and act upon information or allegations concerning unlawful or improper conduct.

"(b) The table of sections for chapter 31 of title 28, United States Code, is amended by adding at the end the following:

"528. Recording and disclosure of outside contacts.

"529. Disqualification of officers and employees of the Department of Justice.

"530. Office of Professional Responsibility."

POLITICAL ACTIVITY

Section 5. Section 7324 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding the provisions of subsection (d) of this section, subsection (a)(2) applies to all officers and employees of the Department of Justice, including United States attorneys. Nothing herein shall prevent such officers or employees from explaining or defending the official actions or policies of the Department of Justice."

SEPARABILITY

Section 6. If any part of this act is held invalid, the remainder of this act shall not be affected thereby. If any provision of any part of this act, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

Section 7. There are authorized to be appropriated for each fiscal year through September 30, 1982, such sums as may be necessary to carry out the provisions of this act.